

(2021) 06 OHC CK 0050

In the Orissa High Court

Case No : Writ Petition (Civil) No.1885 Of 2014

Shikha Bhowmick And Another

APPELLANT

Vs

State Of Orissa

RESPONDENT

Date of Decision : 17-06-2021

Acts Referred:

Constitution of India, 1950 — Article 226, 227
Orissa House House Rent Control Act, 1967 — Section 11
Odisha Government Land Settlement Act, 1962 — Section 3, 3(4)(a), 4
Transfer of the Property Act, 1882 — Section 44
Orissa Government Land Settlement Rules, 1983 — Rule 3, 5, 5A, 5B, 8, 11, 12, 13

Citation : (2021) 06 OHC CK 0050

Hon'ble Judges : Dr. S. Muralidhar, CJ;B. P. Routray, J

Bench : Division Bench

Advocate : Ramakanta Mohanty, Mahitosh Sinha

Final Decision : Disposed Of

Judgement

B.P. Routray,J.

1. The orders of the Collector, Puri and the Revenue Divisional Commissioner, Central Division, Cuttack vide Annexures-4 & 5 respectively, passed under the provisions of Odisha Government Land Settlement Act and Rules have been

assailed by the Petitioners.

2. Babu Ashutosh Mallick (since deceased), who is the common ancestor of Opposite Party Nos.5 to 27, was granted Khasmahal lease of the land appertaining to Plot No.500, measuring Ac.0280 dec. (presently Plot No.147, area Ac.298

dec) of Mouza Nolia Sahi under Balukhanda Khasmahal, Unit No.12, Hal Khata No.33, Holding No.716, Circle No.X under Puri Municipality. The lease was for a period of thirty years effective from 2nd December, 1919 to 1st December,

1949. On expiry, it was renewed twice for the period from 2nd December, 1949

to 1st December, 1979 and from 2nd December, 1979 to 1st December, 2009. Babu Ashutosh Mallick had four sons, namely, Jyoti Prasad Mallick, Amiya

Prasad Mallick, Radha Gobindo Prasad Mallick and Shiva Prasad Mallick. Both the extensions were made in favour of the Legal Representatives (LRs) of Babu Ashutosh Mallick.

3. A building namely, 'Ashu Bhawan' was constructed over the leasehold land by the original lessee, Babu Ashutosh Mallick. On 27th August, 1952, the land along with 'Ashu Bhawan' was given on sub-lease with monthly

tenancy for a period of fifteen years in favour of one Makhanlal Halder. The said Makhanlal Halder continued the hotel business in 'Ashu Bhawan' in the name and style of 'Puri Hotel'. Before expiry of fifteen years, Makhanlal

Halder by subsequent Sub-lease inducted one Jatindranath Bhowmick to run the hotel business in the name and style of 'Sagarika Hotel'. Upon expiry of fifteen years period of Sub-lease on 26th August, 1967, the L.Rs of Ashutosh

Mallick executed another Sub-lease on monthly tenancy in favour of Jatindranath Bhowmick for a period of twelve years eleven months effective from 2nd January, 1967 to 1st December, 1979. During this period, Bhowmick was permitted to

make additional construction work on the land including the extension work of Ashu Bhawan to use for commercial purpose. In the meantime, Jatindranath Bhowmick died and a fresh Sub-lease was granted by the L.Rs of Ashutosh Mallick in

favour of two daughter-in-laws of Jatindranath Bhowmick, viz., Smt. Sikha Bhowmick and Smt. Ruby Bhowmick, the present Petitioners, for a period of ten years with effect from 2nd December, 1979 to 1st December, 1989 on payment of

monthly rent. Before expiry of the said period of sub-lease, the L.Rs of Ashutosh Mallick served a notice on 30th May, 1989 on the Petitioners to handover vacant possession of the property immediately after 1st December, 1989. The said

notice is reproduced below:

'BY SPEED POST WITH A/D

FOR AND ON BEHALF OF SRI DHRUBA PRASAD MALLICK, SHRI ALOK KUMAR MALLICK AND OTHERS, LESSORS IN RESPECT OF PROPERTY FROM EARLIER AS ASHU BHAWAN SITUATED IN THE SEA

BEACH AT PURI

To

Smt. Sikha Bhowmik,

w/o. Sri D.K. Bhowmik

Smt.Ruby Bhowmik,
w/o.Sri Anup Kumar Bhowmik,
At Hotel Sagarika,
Puri.

Dear Madam,

The Lessors have transmitted the document as executed between you and then on 13.7.1981 in respect of lease of the property as owned by the lessors and situated in the sea-beach at Puri and known then as Ashu Bhawan. By virtue of the said agreement, you have

had been carrying on hotel business in the said property or existing of land and building on payment of monthly rent. As instructed by my clients, I am to invite your kind attention to Clause I of and as well Clause VII of the said agreement. For convenience they are

extracted hereunder:

(i) The lease of the premises mentioned in the schedule herein below shall be for a period of ten years, commencing on and from the 2nd day of December, 1979, and shall expire on the 1st day of December, 1989;

(ii) The Lessees shall keep in deposit with the lessors a sum of Rs.10,800/- (Rupees ten thousand and eight hundred) only being six month rent as security deposit, which shall be adjusted against the rents payable for the said demised premises for the last six months

of the lease.â??

Purpose of this letter is to invite your kind attention to the date of expiry of the lease agreement which in first expires on 1st December, 1989. My clients have decided not to let out the said property any more. In fact, they are now in need of such a building in order to

be able to use it for their own residence in old age and for health care. It would be really kind of you if you please make it convenient to give vacant possession of the said property on or immediately after the date of expiry of the lease as agreed to in the aforesaid

agreement which as you may kindly recall expires on 1st December, 1989.

It is further brought to your kind notice that no rent need be paid for the last six months, since the rent would be adjusted by virtue of clause (vii) of the said agreement. My clients will really be happy if you kindly acknowledge the receipt of this letter and please do

the needful in pursuance of the said agreement and now reminded herein.

according to the English Calendar month. Under the said lease, we, the Lessees, are also liable further to pay to the State Government, the rent of the land payable by you at the rate of

Rs.357/- annually and also the Municipal Taxes payable for the demised premises amounting to Rs.1,028-30 per year.

That the Lease aforesaid expires on the 1st day of December, 1989, and we, the Lessee, being desirous of continuing our possession of the said premises as tenant after the said date of expiry of the Lease for a further period of twelve months at the said rate of rent,

hereby give you notice under Section 11 of the Orissa House House Rent Control Act, 1967 and we hope you will be good enough to extend the term of tenancy for a further period of twelve months commencing from the expiry of 1st December, 1989 in other words,

commencing on and from the 2nd day of December, 1989. Please also take note of the fact that the rent payable in respect of the said premises under said Deed of Lease dated the 13th July, 1981, has been paid up until the date of the said Lease, i.e. up to and including

1st day of December.

The rent of the said premises will be remitted to you month by month, or if you so choose, the same may be sent in a lump for the whole period of twelve months at a time. In case of your refusal to accept rent from us, we shall be constrained to deposit the said with

the office of the Controller under the Orissa House Rent Control Act, 1967, which please note.

Thanking you,

Yours faithfully,â??

5. As the Petitioners did not hand over vacant possession of the property, the L.Rs of Babu Ashutosh Mallick filed Title Suit No.9 of 1990 in the court of the learned Sub-ordinate Judge, Puri against the Petitioners praying for a decree for

eviction along with damages. The present Petitioners, who are defendants in T.S.No.9 of 1990, filed Misc.Case No.221 of 1991 praying for temporary injunction restraining the plaintiffs from interfering with their peaceful possession. Learned

Sub-Judge, Puri by order dated 31st March, 1992 directed to maintain status quo in respect of the suit property subject to deposit of agreed monthly rent regularly in Court by the present Petitioners.

6. The Odisha Government Land Settlement Act, 1962 (in short â??OGLS Actâ??) underwent amendment by Odisha Act No.1 of 1991 and Sub-section 4 to Section

3 was inserted with effect from 2nd September, 1993. It reads as follows:

â??(4) Notwithstanding anything to the contrary contained in the preceding subsections or in any law or any custom, practice or usage having the force of law-

(a) any Khasmahalland or Nazul land, except where such land is used as homestead in any urban area, which has been leased out prior to the appointed date, shall whether the lease, where it had already expired, has been renewed or not prior to such date, be deemed

to have been leased out under this Act to the person holding such land whether as a lessee, or as a sub-lessee either under the lessee or under a sub lessee:

Provided that-

(a) (i) any such lessee who is entitled to receive any rent from sub-lessee under him, or

(ii) any such sub-lessee who is entitled to receive any rent from a subsequent sub-lessee under him.

under any instrument executed for such lease or sub-lease, as the case may be, shall be paid a compensation by the sub-lessee or subsequent sub-lessee, as the case may be, equivalent to ten times the said rent in the manner as may be prescribed.

(b) The compensation so payable shall, if not paid by the concerned sub-lessee or subsequent sub-lessee, as the case may be within the prescribed period, be recoverable from him by the Tahasildar having jurisdiction over the area as arrears of land revenue and be

paid to the concerned lessee or sub-lessee, as the case may be, in the manner as may be prescribed:

(c) any Gramakantha Parambok land or Abadi land, except where such where such land is used as homestead in any urban area, which is in occupation by any person for not less than five years as on the appointed date, shall be settled with the said person in such

manner, by such officer and subject to such terms and conditions as may be prescribed:

Provided that any such land which is situated in an urban area shall be settled on lease-hold basis and in case of other lands settlement shall be on raiyati basis:

(c) any Khasmahal land, Nazul land, Gramakantha Parambok land or Abadi land, which is used and in occupation by any person as homestead in any urban area for not less than five years as on the appointed date, shall, subject to the payment of compensation in the

case of Khasmahal and Nazul land as mentioned in the proviso to Clause (a), be settled-

(i) in the case of Khasmahal or Nazul land, with the person lawfully holding such land on and from the date the compensation is paid: and

(ii) in the case of Gramakantha Parambok and Abadi land, with the person in occupation of such land on and from the appointed date,

on permanent basis with heritable and transferable rights.

Explanation-For the purposes of this sub-section, the expression "appointed date" shall mean the date of publication of the Orissa Government Land Settlement (Amendment) Act, 1990 in the official gazette."

7. Correspondingly, Rule 5-B was inserted in Orissa Government Land Settlement Rules, 1983 with effect from 7th December, 1993, which reads as follows:

"5-B. Notwithstanding anything contained in Rules 3, 5, 5-A, 8,11, 12,13, settlement of Khasmahal and Nazul land, Gramakantha Parambok and Abadi land leased out prior to the 9th day of January, 1991 shall be made in the manner prescribed in Schedule V."

8. Clause-3 of Schedule-V reads as under:

"3. Nazul/Khasmahal lands used as homestead in urban area-(a) Tahasildar on being satisfied after enquiry that any Nazul/Khasmahal land is used and in occupation by any person as homestead for a period of not less than five years as on the appointed day shall

settle the said land in favour of the person holding such land, on execution of lease-deed in Form IV. In case of a sub-lessee and subsequent sub-lessee such settlement shall take effect on production of the stamped receipt in Form 1 from the date of payment of such

compensation to the person (s) immediately under whom they held the land:

Provided that on each such settlement, approval of the Collector shall be obtained.

(b) The amount of compensation shall be equal to ten times of the annual rent as provided in the lease-deed."

9. During pendency of the Eviction Suit, the L.Rs of late Shiva Prasad Mallick executed Lease Deed No.3670 dated 29th October, 1993 creating sub-lease in favour of the Petitioners for a period of ten years with effect from 1st December, 2009.

10. Here the real dispute erupts.

11. In 1995, the Petitioners applied for permanent settlement of the property in

their favour under Section 3(4)(a) of the O.G.L.S. Act in BPL Case No.94 of 1995 to the Tahasildar, Puri. The Tahasildar allowed the prayer of the Petitioners on 30th April, 1997 with approval of the Collector, Puri and settled the property in the name of the Petitioners.

12. The other L.Rs of Babu Ashutosh Mallick filed O.J.C. No.8691 of 2000 before this Court challenging the aforesaid lease made in favour of the Petitioners. By order dated 18th March, 2008 the said writ application was disposed of as

withdrawn to approach the R.D.C.(CD), Cuttack in appeal. Then Khasmahal Appeal No.1 of 2008 was filed before the R.D.C. by the present Opposite Party No.5 and the R.D.C. by order dated 28th November, 2008 remitted the matter

back to the Collector, Puri for re-examination with direction to resume the land first, if necessary, and take steps to lease out the same to the eligible person as per the law. The said order of the R.D.C. was challenged by the present

Petitioners in W.P.(C) No.1961 of 2012 before this Court and this Court while declining to interfere with the order of R.D.C. disposed of the same with an observation that the Collector, Puri is directed to decide matter and consider all other

contentions to be raised by either parties in accordance with law. Thereafter the Petitioners moved before the Honâ??ble Supreme Court in SLP(C) No.17596 of 2012. The Supreme Court by order dated 13th July, 2012 disposed of the

S.L.P. with following directions:-

â??After having heard learned counsel for the petitioners and after perusal of the record, we are not inclined to interfere against the impugned order passed by the Division Bench of the High Court as by the same, matter has only been remanded to Collector, Puri to

decide the issue in accordance with law. However, Division Bench has also directed that the land should be resumed first, before considering the question of grant of fresh lease. Once the matter has been remanded for inquiry and if land is also resumed, then it would

put the petitioners to an irreparable loss and injury.

Admittedly, the petitioners are in possession of the said disputed land since 21.6.2000 by virtue of the Deed of Lease duly executed by the Government of Orissa in favour of the petitioners and it is a registered document.

Thus, looking to the facts and features of the case, we deem it fit and proper to direct the Collector to dispose of the matter as expeditiously as possible and preferably within a period of 30 days from the date of communication of this order, and only till the disposal of

the matter by the Collector, the possession of the petitioners shall not be

disturbed, if they still continue to be in possession. It is also expected that none of the parties would seek undue adjournment of the matter.

Special leave petition is accordingly disposed of.

Registry is directed to remit the copy of the order to Collector, Puri (Orissa) forthwith.â??

13. The Collector, Puri by order dated 13th December, 2013 disposed of the matter by directing as follows:-

â??.. XX â?|. XX â?|. XX ..

a) Permanent Settlement in BPL Case No.94/95 is hereby cancelled. The land is resumed to Government.

b) Tahasildar, Puri is directed to correct ROR of the case land to Govt.khata and intimate DSR, Puri for cancellation of lease deed.

c) Petitioners are directed to vacate the building and its premises within one month i.e. by 15th January, 2014.

d) Tahasildar, Puri is directed to take over possession of the land and building by 16.1.2014.

e) No compensation is awarded to either of the parties. Prayer of both parties is rejected.

f) Possession of the land and building by petitioners is hereby vacated by 15th January, 2014.

g) ADM/Sub-Collector are directed to ensure the compliance of the above order by Tahasildar.

h) Fresh lease to be considered by the Competent Authority in accordance with law.

.... XX â?|. XX â?|. XX â?|.â??

14. The Petitioners preferred Khasmahal Lease Appeal No.1 of 2014 against the order of the Collector, Puri dated 13th December, 2013. The R.D.C. by order dated 3rd January, 2014 dismissed the appeal filed by the Petitioners. These two orders of the Collector and R.D.C. are the subject matter of challenge before this Court in the present writ petition.

15. It is contended by the Petitioners that once the matter was decided by the Tahasildar with the approval of the Collector and the registered lease deed was executed in favour of the Petitioners, no further scope remains for the Collector to cancel the permanent settlement and to resume the land, particularly ignoring the temporary status-quo order of the civil court. It is also contended that on 3rd January, 2014 after a lengthy hearing from both sides, the R.D.C. reserved the

order in the matter of stay, but to their utter surprise, receipt of certified copy of the order dated 3rd January, 2014 reveals dismissal of the appeal. Further, as per the Petitioners, the R.D.C. erroneously construed the appeal as a revision and disposed of the same by a cryptic order.

16. On the contrary, Opposite Party No.5 contends that, the Petitioners unauthorisedly occupied the lease hold property after 1st December, 1989 as they do not have any right to continue with possession of the property after expiry of the

agreed sub lease period. The subsequent lease deed executed in their favour by the L.Rs of one branch during pendency of the eviction suit does not authorize their lawful possession. Thus, the order passed by the Tahasildar in BPL Case

No.94 of 1995 was illegal and as such cancelled by the Collector.

17. Admittedly, the property has not been partitioned till date. The general principle governing rights of the co-owners in a common property is that, one co-sharer has no right to alienate the entire property to confer exclusive right on the alienee without consent of other co-owners and such transfer is invalid for want of competency. However, Section 44 of the Transfer of the Property Act authorizes a co-owner to transfer his share subject to conditions.

18. Undisputedly, the sub-lease agreement in favour of the Petitioners expired on 1st December, 1989 and much prior to that, a notice was served on the Petitioners to hand over vacant possession of the property. Since the Petitioners did not

vacate the premises, T.S.No.9 of 1990 was filed by Opposite Party No.5 and other L.Rs for eviction of the Petitioners from the land and premises. Thus, without any valid authority, the continued possession of the property by the Petitioners

after 1st December, 1989 was unauthorized and they had to be treated as trespassers from 2nd December, 1989 onwards. When the status of the Petitioners remains as such from 2nd December, 1989 onwards in respect of the property, and

the suit for their eviction is pending adjudication, the interim order of the Civil Court to maintain status quo in respect of the possession over the property does not confer any right on the Petitioners to have their possession over the property

declared as lawful for all purposes. The interim order, if any, passed by the competent court of law does not confer any right of perpetuity on the parties. It is only meant to serve as an interim arrangement. Therefore, the contention of the

Petitioners that they are in possession of the property by virtue of the interim order of the civil court, or that they were in possession for the preceding five

years on the day of coming into force of the newly inserted Sub-section 4 to Section 3

of the O.G.L.S Act, cannot be interpreted in their favour as rendering their possession on the appointed day as lawful. As such no benefit can be extended in favour of the Petitioners on that score.

19. Moreover, Section 4 (a) of Section 3 of the O.G.L.S. Act uses the words "the person holding such land whether as a lessee, or as a sub-lessee either under the lessee or under a sub-lessee", which means the holder of

the land must be a lessee or a Sub-lessee or a subsequent Sub-lessee. Here in the instant case, strictly speaking, the Petitioners were not the lessee or Sub-lessee in view of expiration of the Sub-lease agreement period on 1st December, 1989.

It is true that possession of the Petitioners over the property prior to 2nd December, 1989 was not to the exclusion of the Opposite Parties. The possession of the Opposite Parties over the property as lessors of the Sub-lease continued after

the expiry of the Sub-lease period on 1st December, 1989. Rather the possession of Petitioners ended on the expiry of the Sub-lease period coupled with their being served a notice for eviction. Therefore, there is no legal error in the order of the Collector directing resumption of the land.

20. Clause-3 of Schedule-V of the O.G.L.S. Rules requires that the land must be in use and in occupation as a homestead for a period of not less than five years on the appointed day. As per admitted contention of both the parties, the land and

building were used as a hotel for commercial purpose and not as homestead. Therefore, here too the Petitioners cannot take any benefit from the amended provisions.

21. The contention of the Petitioners that the appellate authority passed the final order on the day of hearing of the stay application also does not hold good on merit in the absence of materials placed on record. The order dated 3rd January,

2014 (Annexure-5) is the final order. Though the said order of the R.D.C. under Annexure-5 appears to be a cryptic one, in the absence of any grounds on merit in favour of the Petitioners and in view of long pendency of the writ petition

before this Court, we do not think it appropriate to remand the matter to the appellate authority at this stage after a period of more than six years.

22. For the aforementioned reasons, and particularly in the absence of any right in the Petitioners to continue to be in possession of the land and property after 1st December, 1989, we find no merit in the writ petition and the same is hereby

dismissed. No order as to costs.

23. Any observation made in this judgment shall not affect the merits of T.S.No.9 of 1990.

24. As the restrictions due to resurgence of COVID-19 situation are continuing, learned counsel for the parties may utilize a printout of the order available in the High Court's website, at par with certified copy, subject to attestation by the concerned advocate, in the manner prescribed vide Court's Notice No.4587, dated 25th March, 2020 as modified by Court's Notice No.4798, dated 15th April, 2021.

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